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United States Attorney
District of Hawaii

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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

| | | |
|---------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA, |) | CRIM. NO. 02-0307DAE |
| |) | |
| Plaintiff, |) | FACTUAL PROFFER, RE: |
| |) | DEFENDANT'S PROPOSED VIDEOTAPE |
| VS. |) | REFERENCED IN HER SUPPRESSION |
| |) | MOTION |
| LENORA JEAN AITCHISON, |) | |
| |) | Suppression hearing: 4/10/06 |
| Defendant. |) | at 9:00 a.m., before the Hon. |
| _____ |) | David A. Ezra |

FACTUAL PROFFER, RE: DEFENDANT'S
PROPOSED VIDEOTAPE REFERENCED
IN HER SUPPRESSION MOTION

Appended to defendant's suppression motion is the
"Declaration of Robert Patten", who claimed to be a prior
neighbor of defendant Aitchison. According to Patten's
Declaration, "[o]n the morning of June 27, 2002, while at my
property, I heard helicopters flying around outside and
immediately began taping these helicopters with my video camera",
and "[w]hile outside, I saw as many as five helicopters, all

circling at treetop level above my property, Lori's property, and two other lots abutting each of our properties"

Defense counsel has given undersigned Government counsel the opportunity to view this videotape. There is a date and time counter displayed when the videotape recording is played. The indicated date throughout was "June 27, 2002", and when the videotape recording first started, the time indicated was about 10:16 a.m. The recording was thereafter started and stopped on several occasions. When the videotape recording finally ended, the time indicated was about 12:54 p.m.

As will be established during the suppression hearing, Detective Burian's first aerial observation of the marijuana plants growing on defendant's property (as described in the warrant affidavit) occurred shortly before 9:55 a.m. on June 27, 2002, that is to say, some twenty minutes or more before the above-referenced videotape recording even started. Consequently, that videotape does not impeach the veracity of the warrant affidavit in any way. The heightened helicopter activity over and around defendant's property, as depicted in the videotape recording, was the result of Detective Burian's initial aerial

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sighting of the marijuana plants, as he reported in his warrant affidavit.

DATED: Honolulu, Hawaii, April 6, 2006.

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By /s/ Michael K. Kawahara
MICHAEL K. KAWAHARA
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at his last known address:

Served by First Class Mail:

Mr. Jack F. Schweigert
Attorney at Law
550 Halekauwila St., Room 309
Honolulu, HI 96813

April 7, 2006

Attorney for Defendant
Lenora Jean Aitchison

/s/ Rowena N. Kang